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**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1942**

**No. 248**

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**THE UNITED STATES OF AMERICA, APPELLANT**

**vs.**

**WILLIAM F. MONIA AND L. AUBREY WILLIAMS**

---

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE NORTHERN DISTRICT OF ILLINOIS**

---

**FILED JULY 20, 1942**

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 248

THE UNITED STATES OF AMERICA, APPELLANT

vs.

WILLIAM F. MONIA AND L. AUBREY WILLIAMS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE NORTHERN DISTRICT OF ILLINOIS

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1 [Caption omitted.]

3 In District Court of the United States, Northern  
District of Illinois, Eastern Division

June Term 1941.

No. 32776

UNITED STATES OF AMERICA

v.

AMERICAN MEAT INSTITUTE; ARMOUR AND COMPANY; SWIFT AND  
COMPANY; WILSON & Co., INC.; CHICAGO SUBCOMMITTEE OF THE  
JOINT MARKETING-IMPROVEMENT COMMITTEE, SHEEP SECTION;  
JOHN HOLMES; CHARLES R. HOOD; WILLIAM F. MONIA; WALTER  
A. NETSCH; PAUL C. SMITH; L. AUBREY WILLIAMS; THOMAS E.  
WILSON

*Indictment*

Filed June 19, 1941

The Grand Jurors of the United States of America, duly impaneled, sworn, and charged in the District Court of the United States for the Eastern Division of the Northern District of Illinois, at the May 1941 Term of said Court, having begun but not finished during said May 1941 Term, among other things, an investigation of the matters charged in this indictment; and having continued to sit by order of this Court in and for said Division and District during the June 1941 Term of said Court for the purpose of finishing investigations begun but not finished during said May 1941 Term; and inquiring within and for said District and Division at the June 1941 Term of said Court, do upon their oaths find and present as follows, to wit:

Each allegation hereinafter made in this indictment that an act has been done by any of the defendants herein or by any other person shall be deemed to be an allegation that such act was performed within the three years next preceding the date of the presentation of this indictment, unless otherwise expressly stated.

4 Wherever in this indictment it is alleged that any corporate or association defendant did any act or thing, such allegation shall be deemed to mean that each of the said individuals named herein as defendants or as co-conspirators and described as officers, agents, employees, or members of the said

corporate or association defendant, did authorize, order, or perform such act or thing.

#### THE DEFENDANTS

The following natural persons, associations, and corporations are hereby indicted and made defendants herein: American Meat Institute; Armour and Company; Swift and Company; Wilson & Co., Inc.; Chicago Sub-committee of the Joint Marketing Improvement Committee, Sheep Section; John Holmes; Charles R. Hood; William F. Monia; Walter A. Netsch; Paul C. Smith; L. Aubrey Williams; Thomas E. Wilson.

Defendant American Meat Institute, sometimes hereinafter referred to as the "Institute," is an Illinois corporation with principal offices in Chicago, Illinois. Said defendant was formerly known as the Institute of American Meat Packers and as the American Meat Packers Association. Its regular membership consists for the most part of meat packers, including the defendant meat packers.

Defendant Armour & Company, an Illinois corporation, is a meat packer with principal offices in Chicago, Illinois.

Defendant Swift and Company, an Illinois corporation, is a meat packer with principal offices in Chicago, Illinois.

Defendant Wilson & Co., Inc., a Delaware corporation, is a meat packer with principal offices in Chicago, Illinois.

The defendants Armour and Company, Swift and Company, and Wilson & Co., Inc., are sometimes referred to in this indictment as the defendant meat packers.

5. Defendant Chicago Sub-Committee of the Joint Marketing Improvement Committee, Sheep Section, sometimes hereinafter referred to as the "Sheep Section," is a voluntary, unincorporated association of individual representatives of meat packers and commission firms that buy and sell live sheep in the Chicago livestock market. It has continuously existed during the period of time covered by this indictment. Said defendant Sheep Section is affiliated with the Chicago Sub-Committee of the Joint Marketing Improvement Committee and with the Joint Marketing Improvement Committee. Its official headquarters are at the offices of the defendant Institute in Chicago, Illinois.

Defendant John Holmes is a resident of Chicago, Illinois, and is President of the defendant Swift and Company.

Defendant Charles R. Hood is a resident of Sandwich, Illinois, and is a Vice-President of the defendant Wilson & Co., Inc.

Defendant William F. Monia is a resident of Chicago, Illinois, and is a sheep buyer employed by the defendant Armour and Company.



Defendant Walter A. Netsch is a resident of Chicago, Illinois, an employee of the defendant Armour and Company, and Chairman of the defendant Sheep Section.

Defendant Paul C. Smith is a resident of River Forest, Illinois, and is a Vice-President of the defendant Swift and Company.

Defendant L. Aubrey Williams is a resident of Chicago, Illinois, an employee of John Clay & Company (a commission firm selling live sheep in the Chicago livestock market), and an order buyer of sheep in the employ of C. A. Kleman (a partnership engaged in order buying of sheep in the Chicago livestock market).

Defendant Thomas E. Wilson is a resident of Chicago, Illinois, and is Chairman of the Board of Directors of the defendant Wilson & Co., Inc.

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## CO-CONSPIRATORS

The following natural persons are not indicated but are named as co-conspirators herein:

Edward J. Dauphinais, a resident of Chicago, Illinois, and a sheep buyer employed by the defendant Armour and Company.

Roy F. Guy, a resident of Chicago, Illinois, and a sheep buyer employed by the defendant Swift and Company.

Garland Russell, a resident of La Grange, Illinois, who is employed by the defendant Swift and Company as supervisor of sheep buyers and is a member of the defendant Sheep Section.

Henry G. Coldsnow, a resident of Chicago, Illinois, and a sheep buyer employed by the defendant Swift and Company.

George E. Meyers, a resident of Chicago, Illinois, and a sheep buyer employed by the defendant Wilson & Co., Inc.

Leo J. Farrell, a resident of Chicago, Illinois, and a sheep buyer employed by the defendant Wilson & Co., Inc.

Homer R. Davidson, a resident of Valparaiso, Indiana, Vice-President of the defendant Institute, and Co-Secretary of the defendant Sheep Section.

John H. Swanson, a resident of Chicago, Illinois, a sheep salesman employed by John Clay & Company (a commission firm selling live sheep in the Chicago livestock market), and a member of the defendant Sheep Section.

Ernest A. Beilfus, a resident of Chicago, Illinois, a sheep salesman employed by Chicago Producers Commission Company (a commission firm selling live sheep in the Chicago livestock market), and a member of the defendant Sheep Section.

J. Clark Eastes, a resident of Chicago, Illinois, a partner in W. R. Smith & Son (a commission firm selling live sheep in the Chicago livestock market), and a member of the defendant Sheep Section.

7 Alexander L. Enright, a resident of Chicago, Illinois, a sheep salesman employed by National Livestock Commission Company (a commission firm selling live sheep in the Chicago livestock market), and a member of the defendant Sheep Section.

Thomas Lynch, a resident of Chicago, Illinois, a sheep salesman employed by Farmers Union Livestock Commission Company (a commission firm selling live sheep in the Chicago livestock market), and a member of the defendant Sheep Section.

James Lee Morrion, a resident of Chicago, Illinois, a partner in Morrion & Wilkins (a commission firm selling live sheep in the Chicago livestock market), and a member of the defendant Sheep Section.

Frank H. Connor, Alan F. Wilson, Charles G. Smith, and Maxwell B. Morgan, co-partners doing business under the firm name of C. A. Kleman (a commission firm buying live sheep in the Chicago livestock market).

#### NATURE OF THE TRADE AND COMMERCE INVOLVED

In the City of Chicago, Illinois, there is located a public stockyard which has facilities for handling and marketing live sheep. Large quantities of sheep produced in Kentucky, Iowa, Minnesota, North Dakota, South Dakota, Montana, Colorado, Texas, and other states are shipped daily by producers to this stockyard for sale in the Chicago livestock market, which is conducted at the stockyard.

Doing business in the Chicago livestock market are commission firms. These commission firms receive the sheep so shipped and display them for sale in regularly assigned pens. The commission firms as agents for the producers sell the sheep on commission. This commission is based upon the number of sheep sold and bears no relation to the sale price.

8 The defendants Armour and Company, Swift and Company, and Wilson & Co., Inc., have slaughtering plants located adjacent to the public stockyard in Chicago. These defendants employ sheep buyers, who deal in the market with sheep salesmen, representing commission firms, for the purchase and sale of the live sheep displayed in the pens. The defendant L. Aubrey Williams is an order buyer. He purchases live sheep in accordance with orders received by him from meat packers who have slaughtering plants located in states other than Illinois. An important factor in determining the price to be paid for the live sheep is the buyer's estimate of the amount of dressed meat that the sheep will yield. Over 90 per cent of the live sheep received at the stockyard are purchased by the defendants Swift and Company, Wilson

& Co., Inc., Armour and Company, and Williams. The defendant Williams is also a sheep salesman representing commission firms.

Live sheep are customarily bid and sold in the Chicago livestock market on the day of receipt. The market is open from Monday to Saturday, inclusive. Most sheep arriving on Saturday, however, are not bid and sold in trading on that day but are purchased prior to arrival under a practice of buying to arrive on Saturday at market prices prevailing on the day of sale.

Live sheep sold in the Chicago livestock market are in part transshipped to destination points in Illinois and other states and in part slaughtered and processed in Illinois and sold as dressed meat in Illinois and other states.

#### THE CONSPIRACY

During a period of approximately four years immediately preceding the return of this indictment, the defendants, together with their co-conspirators named herein and other persons unknown to the Grand Jurors, have engaged knowingly and continuously in a conspiracy to fix prices for the sale, in the Chicago livestock market in Illinois, of live sheep shipped from states other than Illinois to the said market for sale therein, which conspiracy has been, within the three years next preceding the return of this indictment, in restraint of the interstate trade and commerce described in this indictment and in violation of Section 1 of the Act of Congress of July 2, 1890, entitled "An Act To protect trade and commerce against unlawful restraints and monopolies" (U. S. C., Title 15, Section 1), commonly known as the Sherman Act.

It has been a part of the aforesaid conspiracy that the defendants suppress competitive trading in live sheep in the Chicago livestock market; that the defendant meat packers agree upon the respective shares of the receipts of live sheep at the said market to be purchased by them and govern their purchases accordingly; and that the defendants and their co-conspirators agree upon and follow rules controlling the order in which sheep buyers respectively deal with each sheep salesman, the time-length of such negotiations, and the prices and other terms and conditions of bids and sales.

For the purpose of effectuating the aforesaid conspiracy, the defendants have done those things which, as hereinbefore alleged, they have conspired to do and more particularly have done, among others, the following acts and things:

The defendants and their co-conspirators have frequently and regularly held meetings at which they have discussed and adopted



rules sanctioning the purchase of live sheep "to arrive on Saturday," prescribing the tossing of coins by sheep buyers to determine the order in which each buyer shall deal with each sheep salesman, governing the time-length of such negotiations, and governing the prices and other terms and conditions of bids and sales made in the aforesaid regulated order of precedence

- 10 among sheep buyers and within the aforesaid regulated time limits.

The defendants and their co-conspirators have regularly engaged in the practices sanctioned or prescribed by the aforesaid rules and refrained from practices prohibited by such rules, in the conduct of trade in live sheep in the Chicago livestock market.

The defendants and their co-conspirators have appointed Homer R. Davison as a referee to enforce compliance with the aforesaid rules, and such referee has enforced compliance.

The defendants and their co-conspirators have regularly exchanged among themselves dressing percentage results indicating the amount of dressed meat obtained by the defendant meat packers from live sheep purchased by them.

The defendant meat packers have regularly exchanged among themselves information revealing the quantity of live sheep purchased by each and, thereby, the current market position of each with relation to its respective agreed share of the receipts of live sheep at the Chicago livestock market.

The acts done, pursuant to and in furtherance of the conspiracy herein alleged, have had the effect, as intended by the defendants, of suppressing competition in the purchase and sale of live sheep in the Chicago livestock market, of arbitrarily depressing, stabilizing, and otherwise controlling and fixing noncompetitive prices for live sheep sold in the said market, and have had the effect, thereby, of restraining the interstate trade and commerce described in this indictment.

#### JURISDICTION AND VENUE

The conspiracy charged in this indictment has been formed and carried on, as hereinbefore alleged, by the defendants, together with their co-conspirators named herein and other persons unknown to the Grand Jurors, within the Eastern Division of the Northern District of Illinois during the three years next preceding the return of this indictment.

11 And so the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that the defendants named, at the time and place and in the manner and form aforesaid, unlawfully have combined and conspired in restraint of the trade and commerce among

the several states of the United States described in this indictment, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

s/ DANIEL B. BRITT,  
Daniel B. Britt,  
*Special Assistant to the  
Attorney General.*

s/ RICHARD B. O'DONNELL,  
Richard B. O'Donnell,

s/ ROBERT DILLER,  
Robert Diller,

s/ CHESTER D. JOHNSON,  
Chester D. Johnson,

s/ JAMES M. MALLOY,  
James M. Malloy,

s/ JAMES C. CRAMOND,  
James C. Cramond,

s/ JAMES E. MANN,  
James E. Mann,

*Special Attorneys.*

s/ THURMAN ARNOLD,  
Thurman Arnold,  
*Assistant Attorney General.*

s/ J. ALBERT WOLL,  
J. Albert Woll,  
*United States Attorney.*

12

## INDICTMENT

Violation of Section One of the Act of July 2, 1890 (U. S. C. A. Title 15, Sec. 1).

A true bill, James G. Badger, foreman.

[File endorsement omitted.]

13

In United States District Court

Criminal Docket

[Title omitted.]

*Docket Entries*

1941 Grand Jury for May 1941 (Extended) returns the  
June 19— above indictment in open court this date before  
Judge Barnes. Summons to issue for corporate  
defts and bench warrants for individual defendants  
and bonds of individual defts set at \$1,000 each.  
Barnes, J.

- 1942 Mo. of Def't L. A. Williams for lv. to file demurrer and  
 Feb. 20— mo. to quash instant, for lv. to file special plea in  
 bar instant and or ruling of the Court that demur-  
 rer is not waived by filing special plea, allowed. Lv.  
 to Govt. to submit answer brief by April 6, 1942, and  
 Def't. Williams to have 10 days for reply (draft).  
 Holly, J.
- Feb. 20— Filed Demurrer and Motion to Quash and Special Plea  
 in Bar—L. Aubrey Williams by Thomas A. Rey-  
 nolds and Walter H. Jacobs his attys.
- Feb. 28— Filed Special Plea in Bar of Def't. William F. Monia  
 by C. F. Faulkner, Jr., Weymouth Kirkland, John  
 P. Barnes, R. F. Feagans, and A. L. Hodson, Attys.
- Mar. 18— Filed Demurrer to Special Plea In Bar of L. Aubrey  
 Williams and William F. Monia—Daniel B. Britt,  
 Special Ass't to Attorney General.
- June 3— Demurrer to pleas in bar of Def'ts. L. Aubrey Williams  
 and William F. Monia overruled—indictment dis-  
 missed as to said defendants, their bonds discharged,  
 exceptions allowed (draft). Holly, J.

14 In the District Court of the United States, Northern  
 District of Illinois

[Title omitted.]

*Special plea in bar*

Filed Feb. 20, 1942

And now comes L. Aubrey Williams, one of the defendants  
 herein, and for a special plea herein says:

First: That the Indictment herein was returned and presented  
 by a Grand Jury duly impaneled, sworn, and charged in this  
 Honorable Court at the May 1941 Term of said Court to investi-  
 gate, among other matters, the matters charged in the Indictment  
 herein.

Second: That on or about May 5, 1941, the United States Mar-  
 shal, William H. McDonnell, duly served a subpoena upon this  
 defendant, requiring him under penalty to appear before said  
 Grand Jury so investigating the matters covered by the Indict-  
 ment herein as a witness on behalf of the United States, said  
 subpoena being in words and figures as follows:

15 "United States District Court, Northern District of Illi-  
 nois. No. 8042. United States vs. \* \* \* Grand Jury  
 \* \* \* L. A. Williams. To Home Address: 8029 Rhodes Avenue,  
 Chicago. Business Address: C. A. Kleman Company, Union Stock  
 Yards, Chicago, Illinois. You are required, under penalty, to

appear as a witness on behalf of the United States in the above-mentioned Court, at Room 450, United States Court House, Chicago, Ill., on May 6, 1941, at 10 o'clock a. m. In order to get fees for your attendance and mileage, report each morning at Room 450, United States Attorney's office, and show this card, which must be preserved until you are discharged by him. Wm. H. McDonnell, United States Marshal."

On the reverse side:

"Department of Justice, Office of United States Attorney, 450 United States Court House, Chicago, Illinois. To the Clerk of the United States District Court: It is hereby certified that the person whose name appears on the other side of this ticket has attended the United States District Court, as indicated below, as a witness on behalf of the United States, and should be allowed the legal fees and mileage upon taking the usual oath as to the number of days in attendance and miles traveled. \* \* \* U. S. Attorney. Number of days, at \$1.50, \$———. Number of miles, at \$0.05, \$———. Total, \$———. 1940-1941-1942 Jan., Feb., Mar., Apr., May, June, July, Aug., Sept., Oct., Nov., Dec. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31."

Third: That in obedience to said subpoena, and not voluntarily, this defendant was, on the 15th and 16th days of May, 1941, duly called by said Grand Jury so investigating the matters covered by the Indictment herein as a witness for and on behalf of the United States.

Fourth: That this defendant was then and there duly sworn by the foreman of said Grand Jury, and thereupon, in response to questions propounded to him by Government counsel and the members of said Grand Jury, he was compelled to and did give testimony under oath during a period of about four hours on the afternoons of May 15, 1941, and May 16, 1941, concerning in a substantial way the transactions, matters, and things covered by the Indictment herein, and in particular this defendant was compelled to then and there give testimony in respect of the following matters and transactions:

"1. This defendant was questioned concerning, and gave answers in respect of, the intimate details of numerous business transactions between this defendant, as Buying Agent, and The Cudahy Packing Co., as his Principal, said transactions having involved the purchase by this defendant of live sheep in the Chicago live stock market within three years next preceding the return of the Indictment herein.

"2. This defendant was questioned at length and gave answers as to the details and extent of this defendant's participation in the exchange among the several defendants named in the Indictment of dressing percentage results—the exchange of such results being pleaded as an overt act of said Indictment.

"3. This defendant testified in a substantial way to many other transactions and matters prejudicial to this defendant, all of which transactions and matters are covered by the Indictment herein, as will appear from the minutes of said Grand Jury hearings."

Fifth: That this defendant is not learned in the law and did not consult an attorney-at-law prior to the taking of said testimony; that at no time was this defendant advised or warned by Government Counsel or by any member of said Grand Jury

or by any one else of his Constitutional Right to refuse to  
17 testify in response to said questions then and there before said Grand Jury propounded to him and that at no time was this defendant required by Government Counsel or by anyone else, to, or did he orally or in writing, waive the immunity granted to him in the premises by the provisions of the statute in relation to immunity of witnesses. U. S. C. A., Title 15, Par. 32, Par. 33 (Feb. 25, 1903), C. 755, Par. 1, 32 Stat. 904) (June 30, 1906, C. 3920, 34 Stat. 798).

Wherefore, this defendant pleads specially said facts in bar of further prosecution of said Indictment against him, and prays that he be discharged and go hence without day.

s/ L. AUBREY WILLIAMS,

*Defendant.*

[Duly sworn to by L. Aubrey Williams jurat omitted in printing.]

[SEAL]

s/ THOMAS A. REYNOLDS,

s/ WALTER H. JACORS,

*Attorneys for said Defendant.*

s/ WINSTON STRAWN & SHAW,

*Of Counsel.*

18 In District Court of the United States, Northern  
District of Illinois

[Title omitted.]

*Special Plea in Bar of Defendant William F. Monia*

Filed Feb. 28, 1942

Now comes William F. Monia, one of the defendants to the above numbered indictment, by his attorneys, and presents this his spe-



cial plea in bar to said indictment No. 32776, returned herein on the 19th day of June 1941, and says that the United States of America ought not to prosecute further the aforesaid indictment against this defendant, and prays the court to dismiss said indictment as to this defendant, and to discharge this defendant, for the reason that this defendant has received immunity from prosecution and from being subjected to any penalty or forfeiture for or on account of the transaction, matters, and things charged against him in said indictment, pursuant to the Constitution and laws of the United States, including the provisions of Section 32 of Title 15 of the United States Code, all as hereinafter more fully set forth in this special plea in bar:

1. In said indictment No. 32776, Armour and Company, a corporation, and William F. Monia among others, are indicted, made defendants and identified as follows:

19 "Defendant William F. Monia is a resident of Chicago, Illinois, and is a sheep buyer employed by the defendant Armour and Company";

"Defendant Armour and Company, an Illinois corporation, is a meat packer with principal offices in Chicago, Illinois."

2. The Fifth Amendment to the Constitution of the United States reads in part as follows:

"No person shall . . . be compelled in any Criminal Case to be a witness against himself, . . ."

3. For the purposes of compelling the testimony of witnesses and the production of evidence in any proceeding, suit, or prosecution under the Anti-Trust Laws of the United States, Congress has enacted Section 32 of Title 15 of the United States Code, which provides:

"§ 32. *Immunity of witness.*—No person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, in any proceeding, suit, or prosecution under sections 1 to 27, inclusive, of this chapter: *Provided*, That no person so testifying shall be exempt from prosecution or punishment for perjury committed in so testifying."

4. On or about May 27, 1941, this defendant was served with a subpoena requiring him to appear before said grand jury for the May Term 1941 and testify in behalf of the United States. In pursuance of said subpoena, this defendant appeared before said grand jury for the May Term 1941 and complied with said subpoena, and defendant testified orally on May 27, 1941, as hereinafter more fully set forth. Said grand jury for the May Term 1941 was then and there conducting an investigation concerning trans-

actions, matters, and things claimed to be in violation of the Anti-Trust Laws of the United States including the matters charged in said indictment. Said subpoena was issued and served upon this defendant, an employee of said Armour and Company, in connection with and in aid of said investigation.

20 5. Pursuant to and in response to said subpoena and solely by reason of the compulsion and threat thereof, and not voluntarily, this defendant, on to wit: May 27, 1941, presented himself at the place designated in said subpoena and there on said date, after being sworn, proceeded to testify at length as a witness on behalf of the United States before said grand jury for the May Term 1941, and answered each and every question put to him by or before said grand jury.

6. In obedience to the command of said subpoena as aforesaid, this defendant was compelled to and did give testimony on oath before said grand jury concerning in a substantial way the transactions, matters, and things covered by the indictment herein and in particular, this defendant, in response to questions put to him before said grand jury, gave testimony in respect to the following matters and transactions:

"(a) His position as head sheep buyer in Chicago, Illinois, for defendant Armour and Company; his duties as agent for said Armour and Company in the buying of sheep at Chicago, Illinois; his assistant sheep buyers and their duties, and the acts performed by him and them in accordance with such duties;

"(b) The manner in which the prices bid daily by defendant and his assistants for sheep purchased on the Chicago livestock market for said defendant Armour and Company are determined; his participation in such determination and his instructions to his assistants with respect thereto;

"(c) The practice of tossing coins; the privileges accorded as a result thereof and his and his assistants' participation therein."

This defendant stands ready to and offers to produce a copy of the transcript of his said testimony given before said grand jury as aforesaid.

7. And this defendant avers and submits that under and by virtue of the Constitution and laws of the United States and because of the premises aforesaid, he cannot be prosecuted or subjected to any penalty or forfeiture for or on account of the transactions, matters, and things, or any or either of them, which are in this indictment mentioned and charged against  
21 this defendant.

Wherefore, defendant William F. Monia prays judgment that this said indictment against him be dismissed and set aside as to him and that he be discharged and go hence without day.

By s/ WILLIAM F. MONIA,  
CHARLES J. FAULKNER, JR.,  
Charles J. Faulkner, Jr.,  
s/ WEYMOUTH KIRKLAND,  
Weymouth Kirkland,  
s/ JOHN P. BARNES,  
John P. Barnes,  
s/ R. F. FEAGANS,  
R. F. Feagans,  
s/ A. L. HODSON,  
A. L. Hodson,

*His Attorneys.*

[Duly sworn to by William F. Monia; jurat omitted in printing.]

22 In District Court of the United States for the  
Northern District of Illinois

[Title omitted.]

*Demurrer to special plea in bar of L. Aubrey Williams, Defendant*

Filed March 18, 1942

Comes now the United States of America by Daniel B. Britt, Special Assistant to the Attorney General, and demurs to the special plea in bar heretofore interposed to Indictment No. 32776 by the defendant L. Aubrey Williams, on the grounds:

First: That said plea does not state facts sufficient to constitute a special plea in bar to the above indictment.

Second: That said plea does not state facts sufficient to entitle the defendant L. Aubrey Williams to immunity from prosecution or from subjection to penalty or forfeiture.

Third: That said plea does not allege that the defendant L. Aubrey Williams claimed the privilege against self-incrimination afforded by the fifth amendment to the Constitution of the United States, and consequently neither the fifth amendment to the Constitution of the United States nor section 32 of Title 15, U. S. C. A., commonly known as the immunity statute, has any application.

23 Fourth: That said plea is not well taken as a matter of law.

Dated March 8, 1942.

s/ DANIEL B. BRITT,  
Daniel B. Britt,

*Special Assistant to the Attorney General.*

24 In District Court of the United States for the  
Northern District of Illinois

[Title omitted.]

*Demurrer to special plea in bar of William F. Monia, Defendant*

Filed March 18, 1942

Comes now the United States of America by Daniel B. Britt, Special Assistant to the Attorney General, and demurs to the special plea in bar heretofore interposed to Indictment No. 32776 by the defendant William F. Monia, on the grounds:

First: That said plea does not state facts sufficient to constitute a special plea in bar to the above indictment.

Second: That said plea does not state facts sufficient to entitle the defendant William F. Monia to immunity from prosecution or from subjection to penalty or forfeiture.

Third: That said plea does not allege that the defendant William F. Monia claimed the privilege against self-incrimination afforded by the fifth amendment to the Constitution of the United States, and consequently neither the fifth amendment to the Constitution of the United States nor section 32 of Title 15, U. S. C. A., commonly known as the immunity statute, has any application.

25 Fourth: That said plea is not well taken as a matter of law.

Dated March 18, 1942.

s/ DANIEL B. BRITT,  
Daniel B. Britt,

*Special Assistant to the Attorney General.*

26 In District Court of the United States for the  
Northern District of Illinois, Eastern Division

Indictment No. 32776

UNITED STATES OF AMERICA

v.

AMERICAN MEAT INSTITUTE ET AL.

*Order and Judgment on Demurrers of the United States of America to the Special Pleas in Bar of the Defendants L. Aubrey Williams and William F. Monia*

June 5, 1942

This cause having come on to be heard upon the demurrers of the United States of America to the special pleas in bar entered

by the defendants L. Aubrey Williams and William F. Monia to the indictment herein, and the Court having read and considered the same and having read and considered the briefs filed by the United States of America in support of its demurrers and by the said defendants in opposition thereto, and having rendered and filed herein its Opinion on said cause, and being then and now fully advised in the premises;

It is hereby ordered and adjudged:

First, that the demurrers of the United States of America to the special pleas in bar of L. Aubrey Williams and William F. Monia, are hereby overruled for the reasons set out in the Opinion rendered by the Court;

Second, that the indictment is hereby dismissed as to the defendants L. Aubrey Williams and William F. Monia, and the bail bond of each of said defendants is hereby discharged; and

Third, that the United States of America is hereby allowed exceptions to this order and judgment in so far as it may be aggrieved thereby.

Enter:

s/ HOLLY,

*United States District Judge.*

Dated: June 3, 1942.

26-A In United States District Court for the Northern District of Illinois, Eastern Division

No. 32776

UNITED STATES OF AMERICA

v.

AMERICAN MEAT INSTITUTE ET AL

*Memorandum Opinion*

June 3, 1942

Defendants were indicted charged with conspiracy to violate the Sherman Anti-Trust Act. Defendants, William and Monia, each filed his plea in bar setting up that in response to a subpoena he had appeared before the grand jury which had returned this indictment and given sworn testimony substantially concerning the matters on account of which he was named as defendant, and asserting that under the provisions of Sections 32 and 33 of Title 15 of the United States Code (U. S. C. Title 15 Secs. 32 and 33) he was immune from this prosecution. The Government has demurred to the pleas.



The statute on which the defendants reply reads as follows:

26-B "Immunity of witness.—No person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, in any proceeding, suit, or prosecution under sections 1 to 21, inclusive, of this chapter: Provided, That no person so testifying shall be exempt from prosecution or punishment for perjury committed in so testifying (Feb. 25, 1903, c. 755 § 1, 32 Stat. 904, 15 U. S. C. A. 33).

"Immunity extended to natural persons only.—Under the immunity provisions in section 32 of this title immunity shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath (June 30, 1906, c. 3920, 34 Stat. 798, 16 U. S. C. 33)."

Following the plain words of the statute it would seem clear that neither of these defendants can be prosecuted on account of the matters and things concerning which he testified before the grand jury. But the government says it is not bound by the words of the Act, we must read something else into it; what Congress intended was that only those persons are entitled to the benefit of the statute who, before testifying, declare to the court that they refused to testify on the grounds of self-incrimination and are thereafter required to testify.

It is a novel proposition that a criminal statute may be modified by reading into it something that would make conduct 26-C criminal, which, giving to the words of the statute their plain meaning, was not criminal, or which would take away from one charged with crime a privilege granted in plain and unambiguous words.

Counsel would have us read this statute in the light of the Constitutional provision against self-incrimination and the decisions of the court construing that provision. To so construe such a statute would be to lay a trap for the unwary. One called to testify before a grand jury is entitled to reply on the words of the Act, which are quite plain, and not upon some ingenious construction worked out by learned counsel from the Constitution and prior decisions of the court.

In *United States v. Wiltberger*, 5 Wheat. 76, the defendant had been indicted for manslaughter, the offense having been committed on board an American vessel in the river Tigris, in the empire of China, about 100 yards from the shore and below the low water mark, thirty-five miles above the mouth of the river. The section of the statute upon which the prosecution was based provided for

prosecution of one who committed manslaughter upon the high seas. Evidently the homicide was not committed upon the high seas but the Government contended for a construction of the whole act which would engraft the words of the 8th section, descriptive of the place in which murder might be committed, on the 12th section, which described the place where manslaughter might be committed. This transfer of the words of one section to the other, it was contended would express the obvious intent of the legislature. Passing upon this contention the court said, p. 95:

"The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words, there is no room for construction. The case must be a strong one, indeed, which would justify a court in departing from the plain meaning of the words, especially in a penal act in search of an intention which the words did not themselves suggest."

Judge Hutcheson, sitting in the District Court, in a well reasoned opinion, *United States v. Pardue et al.*, 294 Fed. 543, held that a plea which set out facts substantially the same as those in the present case presented a bar to prosecution on account of matters testified to before the grand jury. To the same effect are *U. S. v. Golman*, 28 F. (2d) 424; *U. S. v. Ward*, 295 Fed. 576; *U. S. v. Moore*, 15 F. (2d) 593. I am aware that there are decisions to the contrary<sup>1</sup> but I cannot agree with them.

The demurrer to the pleas will be overruled. An order accordingly will be entered June 5, 1942.

(s) HOLLY, Judge.

27 In District Court of the United States Northern  
District of Illinois

[Title omitted.]

*Order allowing appeal to the Supreme Court of the United States*

Filed July 3, 1942

This cause having come on this day before the Court on petition of the United States of America, praying for the allowance of an appeal to the Supreme Court of the United States for a reversal of the order and judgment herein overruling the Government's demurrers to the special pleas in bar filed by the defendants Wil-

<sup>1</sup> *U. S. v. Skinner*, 218 Fed. 870 is the leading case contra. Many of the cases cited by counsel for the Government did not involve the statute here under consideration.

liam F. Monia and L. Aubrey Williams to the indictment in this cause, and requesting that a duly authenticated copy of the record of this cause be transmitted to the Clerk of the Supreme Court of the United States; the Court having heard and considered said motion, together with petitioner's statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this cause, the same having been duly filed with the Clerk of this Court,

It is therefore ordered and adjudged: That the United States of America be and it is hereby allowed an appeal to the Supreme Court of the United States from the order and judgment of this Court overruling the Government's demurrers to the special pleas in bar of the aforesaid defendants to the indictment herein, that a duly authenticated copy of the record in this cause be transmitted to the Clerk of the Court, and that a citation be issued as provided by law.

28 It is further ordered, That the United States of America be and it is hereby allowed a period of forty days from the date hereof within which to file and docket said appeal in the Supreme Court of the United States.

Dated at Chicago, Illinois, this 8rd day of July, 1942.

s/ HOLLY,  
*United States District Judge.*

29 In District Court of the United States, Northern  
District of Illinois

[Title omitted.]

*Petition for appeal.*

Filed July 3, 1942

The United States of America, plaintiff herein, states that on the 5th day of June, 1942, the Government demurrers to the special pleas in bar filed by the defendants William F. Monia and L. Aubrey Williams to the indictment in this cause were overruled by this Court. The plaintiff, feeling aggrieved by the rulings of the Court in overruling said demurrers and thereby sustaining the special pleas in bar of said defendants, prays that it be allowed to appeal to the Supreme Court of the United States for a reversal of said order and judgment, in so far as it overrules the Government's demurrers to the special pleas in bar to the indictment, and that a transcript of the record in this cause, duly authenticated, be sent to the Supreme Court of the United States.

The petitioner presents to the Court herewith a statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this cause.

s/ DANIEL B. BRITT,  
Daniel B. Britt,

*Special Assistant to the Attorney General.*

s/ J. ALBERT WOLL,  
J. Albert Woll,

*United States Attorney,  
Northern District of Illinois, Eastern Division.*

30 In District Court of the United States, Northern  
District of Illinois

[Title omitted.]

*Assignments of error*

Filed July 3, 1942

The United States of America, having filed its petition for appeal herein, now states that as a result of the action taken by this Court in overruling the demurrers filed by the Government to the special pleas in bar interposed by the defendants William F. Monia and L. Aubrey Williams to the indictment in this cause there has intervened manifest error to the prejudice of the United States in the following respects:

1. The Court committed material error against the plaintiff in overruling the demurrers interposed by the United States to the special pleas in bar entered by the defendants Monia and Williams to the indictment in the above-entitled cause.

2. The Court committed material error against the plaintiff in sustaining the special pleas in bar entered by the defendants Monia and Williams and dismissing the indictment as to said defendants.

3. The Court committed material error in holding that a natural person appearing in response to subpoena and giving testimony under oath before a grand jury investigating violations

31 of the Sherman Antitrust Act thereby secures automatic statutory immunity from prosecution on account of any transaction, matter, or thing concerning which he testifies, without the need for invoking the constitutional privilege against self-incrimination provided by the Fifth Amendment, or otherwise indicating that his testimony is being given in consideration of securing statutory immunity from prosecution.

The United States of America therefore respectfully prays that the action taken by this Court in overruling the demurrers of the Government and thereby sustaining the special pleas in bar entered by the defendants Monia and Williams, and the ruling of the Court entering judgment in favor of the said defendants on said demurrers be set aside and held for naught.

Filed: July 3, 1942.

DANIEL B. BRITT,

*Special Assistant to the Attorney General.*

32 [Citation in usual form, filed July 3, 1942, omitted in printing.]

33 In District Court of the United States, Northern District of Illinois

[Title omitted.]

*Proof of service*

Filed July 6, 1942

Service of the petition for appeal, order allowing appeal, assignments of error, statement of jurisdiction with opinion attached, praecipe, and citation in the above-entitled cause, together with a statement directing attention to the provisions of paragraph 3 of Rule 12 of the Rules of the Supreme Court of the United States, is accepted and copies received this 6th day of July 1942.

s/ THOS. A. REYNOLDS,  
Thos. A. Reynolds,

s/ WALTER H. JACOBS,  
Walter H. Jacobs,

*Attorneys for Defendant L. Aubrey Williams.*

s/ CHARLES J. FAULKNER, JR.  
Charles J. Faulkner, Jr.,

s/ WEYMOUTH KIRKLAND,  
Weymouth Kirkland,

s/ JOHN P. BARNES,  
John P. Barnes,

s/ R. F. FEAGANS,  
R. F. Feagans,

s/ A. L. HODSON,  
A. L. Hodson,

*Attorneys for Defendant William F. Monia*



34

In District Court of the United States,  
Northern District of Illinois

[Title omitted.]

*Præcipe for Transcript of Record*

Filed July 3, 1942

To the Clerk, United States District Court,  
Northern District of Illinois, Eastern Division:

The appellant hereby directs that, in preparing the transcript of the record in the above-entitled cause for its appeal to the Supreme Court of the United States, you include the following:

1. Docket entries showing the return of the indictment, filing of special pleas in bar of the defendants William F. Monia and L. Aubrey Williams, filing of demurrers by the United States of America to such special pleas in bar, and entry of order and judgment overruling said demurrers of the United States.

2. Indictment.

3. Special pleas in bar of the defendants William F. Monia and L. Aubrey Williams.

4. Demurrers of the United States of America to the aforesaid special pleas in bar.

5. Order and judgment overruling demurrers of the United States of America to the aforesaid special pleas in bar.

6. Opinion (Memorandum) accompanying the aforesaid order and judgment.

7. Petition for appeal to the Supreme Court of the United States.

8. Statement of jurisdiction of the Supreme Court of the United States.

35 9. Assignments of error.

10. Order allowing appeal.

11. Statement directing attention to the provisions of Paragraph 3 of Rule 12 of the Rules of the Supreme Court of the United States.

12. Proof of service on appellees of petition for appeal, order allowing appeal, assignment of error, statement of jurisdiction with opinion attached, præcipe, citation, and statement directing attention to the provisions of Paragraph 3 of Rule 12 of the Rules of the Supreme Court of the United States.

13. Citation.

14. Præcipe.

DANIEL B. BRITT,

Daniel B. Britt,

*Special Assistant to the Attorney General.*

36 [Clerk's certificate to foregoing transcript omitted in printing.]

38 In Supreme Court of the United States

*Statement of points and designation of record to be printed*

Filed Aug. 1, 1942

I.

United States of America, appellant, states that in its brief and oral argument on its appeal in the above-entitled cause it will rely upon the points stated in its assignment of errors therein.

II

The entire record in this cause as filed in this Court is necessary for consideration of the points stated by appellant, and the entire transcript of record as transmitted by the Clerk of the District Court should be printed by the Clerk of this Court.

OSCAR COX,  
*Acting Solicitor General.*

39 Service of the Statement of Points and Designation of  
Record to be printed acknowledged this 27th day of July,  
1942.

THOS. A. REYNOLDS,  
Thos. A. Reynolds,  
L. W.  
WALTER H. JACOBS,  
Walter H. Jacobs,  
L. W.

*Attorneys for Defendant L. Aubrey Williams.*

CHAR. J. FAULKNER, Jr.  
Charles J Faulkner, Jr.  
WEYMOUTH KIRKLAND,  
Weymouth Kirkland,  
JOHN P. BARNES,  
John P. Barnes,  
by C. J. F.  
R. F. FEAGONS,  
R. F. Feagons,  
by C. J. F.  
A. L. HODSON,  
A. L. Hodson.

*Attorneys for Defendant William F. Monia.*

42 [File endorsement omitted.]

43 Supreme Court of the United States

*Order noting probable jurisdiction*

October 12, 1942

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.

[Enter Attorney General.]

[Endorsement on cover:] File No. 46742. Northern Illinois, D. C. U. S. Term No. 248. The United States of America, appellant vs. William F. Monia and L. Aubrey Williams. Filed July 20, 1942. Term No. 248 O. T. 1942.